

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

KAREN LOWY, et al.,

*Plaintiffs,*

v.

DANIEL DEFENSE, LLC, et al.,

*Defendants.*

No. 1:23-cv-01338-CMH-IDD  
(1:23-cv-01501)

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**MEMORANDUM IN OPPOSITION TO PLAINTIFFS’  
MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY**

The undersigned Defendants oppose Plaintiffs’ Motion for Leave to File Notice of Supplemental Authority (Dkt. 181, “Motion”)) because Plaintiffs’ Notice of Supplemental Authority (Dkt. 182-1, “Notice”) and Memorandum in Support of Their Motion for Leave to File Notice of Supplemental Authority (Dkt. 182, “Memorandum”) improperly assert argument in violation of Local Civil Rule 7(F)(1) which prohibits additional briefing “without first obtaining leave of Court.” Further, these filings violate the standard for notices of supplemental authority. *See Ashghari-Kamrani v. United Servs. Auto. Ass’n*, No. 2:15-CV-478, 2016 WL 8253884, at \*2 (E.D. Va. Mar. 18, 2016) (noting the standard for a notice of supplemental authority is that it “contain no legal argument” and alert the Court to a previously unavailable case); *see also Ashghari-Kamrani v. United Servs. Auto. Ass’n*, No. 2:15-CV-478, slip op. at 2 (E.D. Va. Mar. 9, 2016) (collecting cases and holding “[i]t is improper to assert argument regarding cited authority when filing” a notice of supplemental authority); *United Broad. Corp. v. Miami Tele-Comm’n, Inc.*, 140 F.R.D. 12, 13 (S.D. Fla. 1991) (“[A] ‘notice of supplemental authority’ that raises an argument that is not in defendant’s previous memorandum in opposition is in fact an attempt at a

sur-response, which is not permitted in the absence of court order.”). In short, Plaintiffs’ Memorandum and Notice constitute an improper sur-response. The Court should deny Plaintiffs’ motion and disregard and strike all argument in the Memorandum and Notice.<sup>1</sup> In the alternative, in the event the Court grants Plaintiffs’ Motion and enters the Notice, the undersigned Defendants respectfully request leave to respond to Plaintiffs’ arguments.

As explained in *Ashghari-Kamrani*, “Notices of Supplemental Authority that . . . abide by the standard—meaning **contain no legal argument** and alert the Court to a case that was unavailable at the time of pleading—are common practice.” No. 2:15-CV-478, 2016 WL 8253884, at \*2 (E.D. Va. Mar. 18, 2016) (emphasis added). But Plaintiffs’ Notice does not comport with that standard. Indeed, almost the entirety of Plaintiffs’ Notice consists of argument, which is improper. (Dkt. 182-1 at 3–4); *see also Ashghari-Kamrani*, No. 2:15-CV-478, slip op. at 2 (citing *McGee v. Cole*, 993 F. Supp. 2d 639, 644 (S.D.W.Va. 2014)). Plaintiffs’ Motion should be denied, and their improper argument stricken. *Ashghari-Kamrani*, No. 2:15-CV-478, slip op. at 3; *see also McGee*, 993 F. Supp. 2d at 644.

Moreover, memoranda that are “in fact attempts at a sur-response” should also be disregarded and stricken. *Ashghari-Kamrani*, No. 2:15-CV-478, slip op. at 2 (citing *United Broad. Corp. v. Miami Tele-Comm’s, Inc.*, 140 F.R.D. 12, 13 (S.D. Fla. 1991); *see also Legal Seafoods LLC v. Strathmore Ins. Co.*, 517 F.Supp.3d 32, 33 (D. Mass. 2021) (citing same)). Both Plaintiffs’ Notice and Memorandum are unabashed attempted sur-responses in violation of Local Civil Rule 7(F)(1). (Dkts. 182; 182–1). Both include more than two pages of argument based on Plaintiffs’ (mis)characterization of the First Circuit’s holding in *Estados Unidos Mexicanos v. Smith &*

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<sup>1</sup> To be clear, the undersigned Defendants do not oppose a proper notice of supplemental authority and the Court’s consideration of the underlying authority itself. The undersigned Defendants only oppose Plaintiffs’ improper argument contained in their Memorandum and Notice.

*Wesson Brands, Inc.*, No. 22-1823 (1st Cir. Jan. 22, 2024). Such improper argument mandates denial of Plaintiffs’ motion and should be stricken.

If granted leave to respond to Plaintiffs’ arguments, the undersigned Defendants would provide the Court with a comprehensive analysis of *Estados Unidos Mexicanos* explaining why that case does not support Plaintiffs’ arguments and how, in fact, that case supports several of the undersigned Defendants’ bases to dismiss Plaintiffs’ claims against them. Regardless, Plaintiffs’ arguments are facially defective. Indeed, there can be no merit to Plaintiffs’ claims that the First Circuit “expressly rejected” Defendants’ arguments when that court was considering different operative facts and pleadings, and deciding legal issues specific to what was pled in that case.

Accordingly, the undersigned Defendants respectfully request that the Court deny Plaintiffs’ Motion for Leave to File Notice of Supplemental Authority (Dkt. 181) because Plaintiffs’ Notice of Supplemental Authority (Dkt. 182-1) and Memorandum in Support of Their Motion for Leave to File Notice of Supplemental Authority (Dkt. 182) include improper argument and are improper attempted sur-responses, and further request that the Court disregard and strike Plaintiffs’ improper arguments. In the alternative, if the Court should grant Plaintiffs’ Motion for Leave to File Notice of Supplemental Authority, the undersigned Defendants respectfully request leave to respond to Plaintiffs’ arguments.

Dated: February 6, 2024.

Respectfully submitted,

DANIEL DEFENSE, LLC

By: /s/ David C. Bowen  
David C. Bowen (26771)  
WILCOX SAVAGE  
440 Monticello Ave., Suite 2200  
Norfolk, Virginia 23510  
Telephone: 757.628.5500  
dbowen@wilsav.com

Scott L. Braum (admitted *pro hac vice*)  
BRAUM RUDD  
812 East Franklin St.  
Dayton, Ohio 45459  
Telephone: 937.396.0089  
slb@braumlaw.com

V.R. Bohman (admitted *pro hac vice*)  
SNELL & WILMER, LLP  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
Telephone: 702.784.5200

Cameron J. Schlagel (admitted *pro hac vice*)  
SNELL & WILMER, LLP  
600 Anton Blvd, Suite 1400  
Costa Mesa, California 92626-7689  
Telephone: 714.427.7000  
vbohman@swlaw.com  
cschlagel@swlaw.com  
*Attorneys for Defendant*  
*Daniel Defense, LLC*

BRAVO COMPANY USA, INC.

By: /s/ Meredith M. Haynes  
Meredith M. Haynes  
Virginia State Bar No. 80163  
WILLIAMS MULLEN  
200 South 10<sup>th</sup> Street, Suite 1600  
Richmond, Virginia 23219  
Telephone: (804) 420-6225  
mhaynes@williamsmullen.com

Charles E. James, Jr.  
Virginia State Bar No. 46310  
WILLIAMS MULLEN  
200 South 10<sup>th</sup> Street, Suite 1600  
Richmond, Virginia 23219  
Telephone: (804) 420-6529  
cjames@williamsmullen.com

Jeremy Adelson (admitted *pro hac vice*)  
Wisconsin State Bar No. 1065502  
HANSEN REYNOLDS LLC

301 N. Broadway, Suite 400  
Milwaukee, Wisconsin 53202  
Telephone: (414) 326-4043  
jadelson@hansenreynolds.com

Alan W. Nicgorski (admitted *pro hac vice*)  
Illinois State Bar No. 6243574  
HANSEN REYNOLDS LLC  
150 S. Wacker Drive, 24th Floor  
Chicago, Illinois 60606  
Telephone: (312) 265-2253  
anicgorski@hansenreynolds.com

Camden R. Webb (admitted *pro hac vice*)  
North Carolina State Bar No. 22374  
WILLIAMS MULLEN  
301 Fayetteville Street, Suite 1700  
Raleigh, North Carolina 27601  
Telephone: (919) 981-4000  
cwebb@williamsmullen.com

VISTA OUTDOOR, INC. and  
FEDERAL CARTRIDGE COMPANY

By: /s/ James B. Vogts  
James B. Vogts (admitted *pro hac vice*)  
Andrew A. Lothson (admitted *pro hac vice*)  
SWANSON, MARTIN & BELL, LLP  
330 N. Wabash, Suite 3300  
Chicago, Illinois 60611  
Telephone: (312) 321-9100  
jvogts@smbtrials.com  
alothson@smbtrials.com

Alan D. Bart  
Virginia State Bar No. 87300  
REED SMITH LLP  
Riverfront Plaza – West Tower  
901 East Byrd Street, Suite 1900  
Richmond, VA 23219-4068  
Telephone: (804) 344-3400  
abart@reedsmith.com  
*Counsel for Defendants Vista Outdoor, Inc.  
and Federal Cartridge Company*

LOYAL 9 MANUFACTURING, LLC d/b/a SONS  
OF LIBERTY GUN WORKS, FOSTECH, INC.,  
and CENTURION ARMS, LLC

By: /s/ David C. Bowen  
David C. Bowen (VSB No. 26771)  
Willcox & Savage, P.C.  
440 Monticello Avenue, Suite 2200  
Norfolk, Virginia 23510  
Telephone: 757.628.5500  
dbowen@wilsav.com

Scott L. Braum (admitted *pro hac vice*)  
Timothy R. Rudd (admitted *pro hac vice*)  
BRAUM|RUDD  
812-C East Franklin Street  
Dayton, OH 45459  
Telephone: (937) 396-0089  
slb@braumrudd.com  
trr@braumrudd.com  
*Counsel for Loyal 9 Manufacturing, LLC,  
d/b/a Sons of Liberty Gun Works, FosTech,  
Inc., and Centurion Arms, LLC*

HEARING PROTECTION, LLC and  
TORKMAG, INC.

By: /s/ Nancy J. Goodiel  
Nancy J. Goodiel (VSB 27578)  
DeCaro, Doran, Siciliano, Gallagher &  
DeBlasis, LLP  
3050 Chain Bridge Road, Suite 300  
Fairfax, VA 22030  
Telephone: (703) 352-5175  
ngoodiel@decarodoran.com

Christopher Renzulli (admitted *pro hac vice*)  
David A. Jones (admitted *pro hac vice*)  
RENZULLI LAW FIRM, LLP  
One North Broadway, Suite 1005  
White Plains, NY 10601  
Telephone: (914) 285-0700  
crenzulli@renzullilaw.com  
djones@renzullilaw.com  
*Counsel for Defendants Hearing Protection,  
LLC and TorkMag, Inc.*

FIOCCHI OF AMERICA, INC.

By: /s/ Andrew N. Cook  
Andrew N. Cook (Va. Bar No. 39475)  
K&L Gates LLP  
1601 K Street, N.W.  
Washington, DC 20006  
Telephone: 202.778.9000  
Andrew.Cook@klgates.com

Nicholas P. Vari (Pa. Bar No. 59033)  
(Admitted *pro hac vice*)  
K&L Gates LLP  
210 Sixth Avenue  
Pittsburgh, PA 15222-2613  
Telephone: (412) 355-6500  
Nicholas.Vari@klgates.com  
*Counsel for Fiocchi of America, Inc.*

FAB DEFENSE, INC.

By: /s/ Abram J. Pafford  
Abram J. Pafford (VSB No. 79999)  
Emily E. Kelley (VSB No. 96252)  
MCGUIREWOODS LLP  
888 16th Street N.W., Suite 500  
Washington, DC 20006  
Telephone: (202) 857-1700  
apafford@mcguirewoods.com  
ekelley@mcguirewoods.com

Harley Goldstein (admitted *pro hac vice*)  
Daniel C. Curth (admitted *pro hac vice*)  
GOLDSTEIN & MCCLINTOCK, LLLP  
111 W. Washington Street, Suite 1221  
Chicago, IL 60602  
Telephone: (312) 337-7700  
harleyg@goldmclaw.com  
danc@goldmclaw.com  
*Counsel for Defendant FAB Defense, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of February 2024, I filed the foregoing via the Court's Electronic Case Filing (ECF) system, which will send a Notice of Electronic Filing (NEF) to the parties of record.

By: /s/ David C. Bowen  
David C. Bowen (26771)  
WILCOX SAVAGE  
440 Monticello Ave., Suite 2200  
Norfolk, Virginia 23510  
Telephone: 757.628.5500  
dbowen@wilsav.com  
*Counsel for Defendant*  
*Daniel Defense, LLC*